

IN THE  
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945.

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No. 763

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HUGH GREER CARRUTHERS,  
*Petitioner,*

*vs.*

UNITED STATES OF AMERICA,  
*Respondent.*

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MOTION FOR LEAVE TO CITE ADDITIONAL  
AUTHORITY IN SUPPORT OF PETITION  
FOR CERTIORARI.

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Now comes Hugh Greer Carruthers, Petitioner herein, by Walter Bachrach and Walter H. Moses, his attorneys, and moves this Honorable Court for leave to cite for its consideration in determining Petitioner's prayer for Certiorari herein, the decision of this Court in *Bollenbach v. U. S.*, No. 41 this term, opinion rendered January 28, 1946, after the filing of the Petition for Certiorari herein, and particularly the following portions of said opinion:

"The petitioner was convicted of conspiring to violate the National Stolen Property Act. The Circuit Court of Appeals for the Second Circuit sustained the conviction. We brought the case here, 324 U.S. 837,

because it was submitted to the jury in a way that raised an important question in the administration of federal criminal justice. \* \* \*

The question is whether he was properly convicted under the indictment. \* \* \*

'In a trial by jury in a federal court, the judge is not a mere moderator, but is the governor of the trial for the purpose of assuring its proper conduct and of determining questions of law.' *Quercia v. United States*, 289 U.S. 466, 469. 'The influence of the trial judge on the jury is necessarily and properly of great weight', *Starr v. United States*, 153 U.S. 614, 626, and jurors are ever watchful of the words that fall from him. Particularly in a criminal trial, the judge's last word is apt to be the decisive word. If it is a specific ruling on a vital issue and misleading, the error is not cured by a prior unexceptional and unilluminating abstract charge. \* \* \*

In view of the Government's insistence that there is abundant evidence to indicate that Bollenbach was implicated in the criminal enterprise from the beginning, it may not be amiss to remind that the question is not whether guilt may be spelt out of a record, but whether guilt has been found by a jury according to the procedure and standards appropriate for criminal trials in the federal courts.

Accordingly, we cannot treat the manifest misdirection in the circumstances of this case as one of those 'technical errors' which 'do not affect the substantial rights of the parties' and must therefore be disregarded. 40 Stat. 1181, 28 U.S.C. par. 391. All law is technical if viewed solely from concern for punishing crime without heeding the mode by which it is accomplished. The 'technical errors' against which Congress protected jury verdicts are of the kind which led some judges to trivialize law by giving all legal prescriptions legal potency. See Taft, *Administration of Criminal Law* (1905) 15 Yale L.J., 15. Deviations from formal correctness do not touch the substance of the standards by which guilt is determined in our courts, and it is these that Congress rendered harm-

less. *Bruno v. United States*, 308 U.S. 287, 293-94; *Weiler v. United States*, 323 U.S. 606, 611. From presuming too often all errors to be 'prejudicial' the judicial pendulum need not swing to presuming all errors to be 'harmless' if only the appellate court is left without doubt that one who claims its corrective process is, after all, guilty. In view of the place of importance that trial by jury has in our Bill of Rights, it is not to be supposed that Congress intended to substitute the belief of appellate judges in the guilt of an accused, however justifiably engendered by the dead record, for ascertainment of guilt by a jury under appropriate judicial guidance, however cumbersome that process may be."

Respectfully submitted,

WALTER BACHRACH,

WALTER H. MOSES,

*Attorneys for Petitioner.*